

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

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CHAPEL HILL, NC 27516-2356

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February 14, 2012

Via Email (r4foia@epa.gov) and U.S. Mail

LouAnn Gross
Region 4 Freedom of Information Act Office
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth St., S.W., 9th Floor
Atlanta, GA 30303-8960

Control Number	4-FOI- 00316-12
Response Due Date:	3/15/12
Fee Category:	Other
Assigned to:	POC: 64 SESD OEA 11 Other PB
Special Instructions:	FCC waiver

Re: FOIA Request—Canadys and Cope Coal Plants in South Carolina

Dear Ms. Gross:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Southern Environmental Law Center ("SELC") requests certain documents in the possession or control of the U.S. Environmental Protection Agency, Region 4, ("EPA Region 4").

Request for Documents

Specifically, SELC requests the following documents concerning or related to air permitting and air emissions of the South Carolina Electric & Gas Company's ("SCE&G") Canadys coal-fired generating station and associated facilities near Walterboro, South Carolina, and SCE&G's Cope coal-fired generating station and associated facilities near Orangeburg, South Carolina:

1. Any and all documents related to Title V or other air permits, draft air permits or permit applications for each plant in the last five years;
2. Any and all notices of violation, other enforcement-related actions, and/or consent decrees or settlements under the Clean Air Act and/or the state SIP regarding each plant for the past five years;
3. Any and all requests for information sent by EPA pursuant to section 114 of the Clean Air Act covering each plant in the last five years;
4. Any and all documents concerning or related to emissions inventories, compliance certification, monitoring, and/or emission exceedences at the plants for the past five years.

5. Any and all correspondence related to the above, including but not limited to correspondence with the permittee and/or its agents and with state and federal agencies; and
6. Any and all records of internal EPA communications concerning or related to the above.

For the purposes of this request, the term "records" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of EPA. This request includes, but is not limited to, internal and interagency meeting notes; electronic mail messages (whether sent, received, deleted, etc., including attachments), telephone logs, notes or other records of communications with other federal state agencies, elected officials, or members of the public; and comments submitted by the public and by state and federal agencies. Our request also specifically includes responsive documents and records prepared by, created by, or in the possession, custody, or control of EPA's agents, contractors, and subcontractors. In addition, we request access to each version of a record or document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc. Finally, we request that you produce electronically stored information in its native format, and specifically that you produce electronic mail in ".pst" format.

If any portion of this request is denied, SELC requests a detailed statement of the reasons for the withholding and an index or similar statement of the nature of the materials withheld. In the event of deletions or redactions, we request that a reason be stated for each partial denial of access. FOIA also requires the release of all reasonably segregable portions of documents that are themselves not exempt. 5 U.S.C. § 552(b). Also, please be advised of President Clinton's October 4, 1993, Executive Order, stating that reasonable doubts concerning FOIA requests be resolved in favor of access, and President Obama's January 21, 2009, Executive Order, stating that "all agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government."

Request for Fee Waiver

SELC requests that you provide access to and copies of these documents without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107, because reduction or waiver of fees would contribute to public understanding of EPA's activities and is not in SELC's commercial interest. FOIA directs agencies to furnish records free of charge, or at a reduced charge, if disclosure is in the public interest because (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii). The public interest standard of the fee waiver provision of FOIA should be "liberally construed" in favor of an organization like SELC. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284

(9th Cir. 1987); see also *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D. Colo. 1994) (explaining that the goal of the fee waiver statute is to avoid the "roadblocks and technicalities which have been used by various Federal agencies to deny waivers" (internal citation omitted)); *Etlinger v. FBI*, 596 F. Supp 867, 872 (D. Mass. 1984).

In support of our request for a fee waiver, the following information addresses in detail the six factors identified in the U.S. Department of Justice's Freedom of Information Act Guide & Privacy Act Overview (May 2004):

1. The subject matter of the requested records specifically concerns identifiable "actions or activities of the government."

The subject matter of the requested records concerns permitting of coal-fired electrical generating units, which are sources of air pollutants subject to permitting under the Clean Air Act. Although the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, is the agency responsible for issuing air permits for the subject facilities, EPA has responsibility for reviewing and commenting on permits. In addition, EPA often consults with state agencies, other federal agencies, the permit applicants, and other parties regarding permit applications. EPA also has enforcement authority under the Clean Air Act. The requested records, therefore, concern identifiable actions or activities of EPA, an agency of the federal government.

2. The requested documents will be meaningfully informative in relation to the subject matter of the request, and the disclosure is therefore "likely to contribute" to an understanding of specific government operations or activities.

As discussed under factor no. 1, above, the requested documents concern EPA's involvement in regulating emissions from coal-fired electrical generating units. Disclosure of documents in the possession of EPA regarding the agency's regulatory and enforcement activities is likely to contribute to an understanding of those activities.

3. Disclosure of the requested documents will contribute to the understanding of the public at large.

SELC is a 501(c)(3) non-profit organization with over 25 years of experience disseminating public information on environmental issues in the Southeast, including air quality issues. See 5 U.S.C. § 552(a)(4)(A)(iii). SELC's website includes information regarding SELC projects, and SELC frequently publishes reports and issues press releases regarding its projects. See <http://www.southernenvironment.org/newsroom/>. SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues, as well as relevant information, documents, and links to other websites. See, e.g., http://www.southernenvironment.org/cases/holding_our_ground/. All of this information is available for free to any interested member of the public. SELC staff members also educate the public by speaking at conferences and other public meetings about

environmental and natural resource issues in the Southeast, including air quality issues related to coal-fired power plants. In addition, SELC staff members frequently speak to reporters about environmental matters of public interest, which are then reported in the news media.

4. Disclosure of the requested documents will contribute significantly to public understanding of government operations or activities.

SELC will use the requested documents to educate both its partner environmental groups and the public concerning air emissions from the subject facilities, and may also participate in public processes concerning permitting of the subject facilities. The protection of human health and of our natural resources from air pollution is of great interest and importance to SELC's members, its partners, and to the public. The requested records will provide information that is crucial to an understanding of the air quality impacts, permitting, and compliance history of the subject facilities. Thus, this FOIA request is likely to contribute significantly to public understanding of EPA's regulation of air emissions from the subject facilities. Friends of the Coast Fork v. U.S. Dept. of the Interior, 110 F.3d 53, 55 (9th Cir. 1997); Carney v. U.S. Dept of Justice, 19 F.3d 807, 814 (2nd Cir. 1994); Pederson, 847 F. Supp at 854-57; Etlinger v. FBI, 596 F. Supp. at 876.

5. SELC has no commercial interest in the disclosure of the requested documents.

SELC, a non-profit organization, has no commercial interest in the requested records. As used in the FOIA, "commercial interest" means information that relates to commerce, trade, or profit. McClellan, 835 F.2d at 1285 (holding that information that might result in further compensation to requesters for a tort claim did not give rise to a commercial interest). The agency records requested do not relate to commerce, trade, or profit, nor does SELC seek to engage in commerce or trade, or to profit from, the requested records.

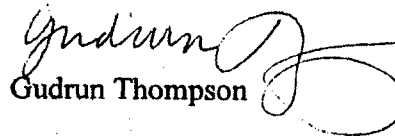
6. "The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest."

This factor is not applicable (please see information pertinent to factor no. 5, above).

As the information above demonstrates, disclosure of the requested documents without charge or at a reduced charge would contribute to public understanding of EPA's activities and is not in SELC's commercial interest. Therefore, SELC requests that you provide access to and copies of these documents without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107.

Thank you for your prompt attention to this matter. Please contact me at gthompson@selcnc.org or 919-967-1450 regarding the manner in which these documents will be made available. Should the volume of responsive documents be large, I ask that the documents be made available for inspection by this office prior to any copying. In accordance with 5 U.S.C. § 552(a)(6)(A), I look forward to your response within 20 business days of your receipt of this request.

Sincerely,


Gudrun Thompson



FOIA Request - Canadys and Cope Coal Plants in South Carolina
Robin Dunn

to:

Group R4Foia

02/14/2012 04:07 PM

Cc:

Gudrun Thompson

Hide Details

From: Robin Dunn <rdunn@selcnc.org>

To: Group R4Foia@EPA

Cc: Gudrun Thompson <gthompson@selcnc.org>

1 Attachment



02-14-12 - FOIA to EPA -Canadys & Cope Coal Plants.pdf

Ms. Gross-

Please see the attached FOIA request. The hard copy will follow by US Mail.

Thank you for your attention to this matter.

Robin Dunn
Administrative Legal Assistant
North Carolina State Bar Certified Paralegal
Southern Environmental Law Center
601 West Rosemary St., Suite 220
Chapel Hill, NC 27516
(919) 967-1450
rdunn@selcnc.org

RECEIVED
FEB 16 2012



Fee Waiver Determination for FOIA Case #: 04-FOI-00316-12

Melvin Cruver to: hq.foia

Cc: r4foia, Gayla Uslu

02/15/2012 07:19 PM

This request is being forwarded for fee waiver determination.

M. J. Cruver

Request for Documents for Case # '04-FOI-00316-12'. Due date: March 15, 2012.



FOIA Control Sheet - Case #- 04-FOI-00316-12.doc Request Description.tif



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 23, 2012

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. Gudrun Thompson
Southern Environmental Law Center
601 West Rosemary Street
Suite 200
Chapel Hill, NC 27516-2356

RE: Request Number 04-FOI-00316-12

Dear Mr. Thompson:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) Region 4 seeking a copy of records regarding air permitting and air emissions of the South Carolina Electric & Gas Company's (SCE&G) Canadys coal-fired generating station and associated facilities near Walterboro, South Carolina, and SCE&G's Cope coal-fired generating station and associated facilities near Orangeburg, South Carolina.

We have reviewed your submission and based on the information provided, we are granting your request for a fee waiver. However, this fee waiver does not include a waiver of fees for otherwise publically available records. The EPA's Region 4 office in Atlanta, Georgia will respond to your information request for the Agency.

If you have any questions concerning this fee waiver determination, please contact me at (202) 566-1667.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman", is positioned above the printed name.

Larry F. Gottesman
National FOIA Officer

Fee Waiver Determination - 04-FOI-00316-12

Vivian Warden to: r4foia, LouAnn Gross, Karen Cody, Urshula
Swann, Gayla Uslu, Lawana Woodard, Melvin
Cruver, Gayla Uslu 02/27/2012 11:45 AM

This is to let you know that the fee waiver request has been granted under FOIA request 04-FOI-00316-12 from Gudrun Thompson, Southern Environmental Law Center. The determination letter has been scanned in to the case file in FOIAXpress.

Please call if you have any questions. Thank you.

Vivian Warden
FOIA Specialist
(202) 566-1663

FOIA and Privacy Branch
(202) 566-1667 (main FOIA phone)
(202) 566-2147 (FOIA fax)
hq.foia@epa.gov